



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: CWA - 203288

PRELIMINARY RECITALS

Pursuant to a petition filed on September 28, 2021, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on November 10, 2021, by telephone. A hearing was initially set for October 14, 2021, but was rescheduled per Petitioner's request.

The issue for determination is whether the agency correctly denied Petitioner's one-time expense request for a kitchen remodel.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and rents his residence from his brother and sister-in-law in their home.

2. Petitioner's diagnoses include diabetes, neuropathy, kidney disease requiring dialysis, and chronic osteomyelitis. His left leg is amputated below the knee. His right foot is partially amputated, including his toes. Petitioner is able to ambulate with the use of prosthetics. However, he mostly uses a wheelchair or cane due to fatigue and weakness.
3. Prior to Petitioner's amputations, he was a chef. Petitioner wants to take an active role in food preparation for the family. However, Petitioner has difficulty navigating the kitchen, which has a U-shaped counter, in his wheelchair. Also, the counters are too high when he is in his wheelchair.
4. On January 4, 2021, Petitioner's submitted a request for a one-time expense to renovate the kitchen to make it easier for a wheelchair to navigate so that he could assist with meal preparation.
5. On March 25, 2021, [REDACTED] performed a remote assessment of the kitchen in Petitioner's home by viewing photographs and interviewing Petitioner and his family over the phone.
6. On May 3, 2021, [REDACTED] completed a report regarding their assessment, which noted the kitchen would be more wheelchair accessible if the kitchen counters were removed and replaced with an L-shape rather than a U-shape and also if the counters were lowered. The bids for the kitchen remodel ranged from \$34,850 to \$51,819.
7. On September 8, 2021, the agency sent Petitioner a notice informing him that his one-time expense request for a kitchen remodel was denied because the agency determined the remodel was not necessary to support Petitioner's outcome of assisting with meal preparation, that there were more cost effective ways for him to assist with meal preparation, and because the remodel was against policy since Petitioner did not own them but, rather, resided in his brother and sister-in-law's home.
8. Petitioner filed a timely appeal.

DISCUSSION

The Include, Respect, I Self-Direct (IRIS) program is a Medical Assistance long term care waiver program that serves elderly individuals and adults with physical and developmental disabilities. IRIS is an alternative to Family Care, Partnership, and PACE—all of which are managed long term care waiver programs. The IRIS program, in contrast, is designed to allow participants to direct their own care and to hire and direct their own workers. The broad purpose of all of these programs, including IRIS, is to help participants design and implement home and community based services as an alternative to institutional care. See IRIS Policy Manual §1.1B (available at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>).

Consistent with the terms of the approved waiver, every IRIS participant is assigned a budget which is generated based on information obtained during a screening of the participant's long-term care functional needs. See IRIS Policy Manual, Sec. 5.3. With the assistance of an IRIS Consulting Agency (ICA), participants identify waiver allowable services that they need to meet their long term care outcomes. The cost of those services must typically fall within the budget estimate. Id. at 5.3A. However, a participant may submit a one-time expense (OTE) request with the assistance of their ICA to pay for goods or services not included in the original budget, including but not limited to home modifications. Id. at 5.8.

The issue in dispute in this case pertains to Petitioner's OTE request for a kitchen renovation. Petitioner was a chef prior to his amputations and would like to assist with meal preparations. Petitioner's sister-in-law testified on his behalf as his representative. Petitioner resides with her and his brother in their home. Petitioner's representative noted that Petitioner uses a wheelchair and cannot navigate the wheelchair

easily in the kitchen due to a U-shaped counter. Additionally, Petitioner's representative noted that the counters are too high when Petitioner is in his wheelchair. Petitioner would like a kitchen renovation to lower the counters as well as create an L-shaped counter to allow for easier navigation in a wheel chair.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By requesting the OTE for the kitchen renovation, Petitioner is the moving party and must prove by a preponderance of evidence that the OTE request meets eligibility requirements.

Home modifications fall under the umbrella of "allowable services" that may be covered under the IRIS program if certain criteria are met. See, IRIS Policy Manual, § 5.4A. In contrast, "non allowable services" include: "[g]oods, supports or services not identified and defined in Appendix C of the approved 1915 (c) HCBS waiver" and "[g]oods, supports, and services not directly related to IRIS participant goals or needs, or that primarily benefit someone else." *Id.* at 5.4B.

The IRIS Policy Manual provides the following regarding home modifications:

Home modifications may improve a participant's home for health, safety, or accessibility, and IRIS participants may use home modifications to increase independence. Home modifications include adding specific equipment or changing features within homes. The definition of "Home Modification" is located in Appendix C of the approved 1915 (c) HCBS waiver and provides the following information regarding limitations:

- Modifications which increase the square footage or that enhance the general livability and value of a privately owned residence are excluded.
- Modifications not recommended in the accessibility assessment are excluded.
- Modifications that are not the most cost effective approach to meeting the participant's long-term care related outcomes are excluded.
- Modifications proposed to modify a rental unit are generally excluded.

Home modifications must demonstrate that the modification addresses disability related long-term care needs that increase self-reliance and independence, or ensure safe, accessible means of ingress/egress to a participant's living quarters, or otherwise provide safe access to rooms, facilities or equipment within the participant's living quarters, or adjacent buildings that are part of the residence. Modifications which increase the square footage or that enhance the general livability and value of a privately owned residence are excluded.

...

Id. at 5.A.1. The Policy Manual also directs that "non allowable modifications" include:

- Modifications to increase the square footage or value of a home;
- Modifications to create boat access;
- Modifications to create more than one accessible entrance/exit to a home;
- Modifications designed for socializing; and
- Modifications that do not address your independence, health, safety, or long-term care-related needs."

Id at 5.8A.2.

The purpose of the waiver program is for the "...state to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization." See, Application for 1915(c) HCBS Waiver: WI.0484.R03.00 - Jan 01, 2021; see also Policy Manual, § 1.1B. As noted by the ICA, one of the Department's guiding principles for the IRIS program is the wise use of public dollars. See Policy Manual § 1.1D.

In this case, the agency noted that renovating the kitchen is not cost effective nor is it necessary to achieve Petitioner's outcomes. Specifically, there is a kitchen table that Petitioner could sit at to prep food for dinner. Further, Petitioner is able to ambulate with his prosthetics and cane. Petitioner would be able to ambulate into the kitchen area and sit down at a stool near the stove or at the counters in order to prepare meals. Petitioner is more comfortable in his wheelchair but is capable of moving without it. Petitioner's representative was asked during the hearing why Petitioner couldn't simply walk into the kitchen using his prosthetics and sit at a stool to cook, then walk back to his wheelchair to move about the rest of the house when he was finished cooking. Petitioner's representative could not provide a response. Thus, the most cost effective option is to have Petitioner use his prosthetics to move into the kitchen and then use a counter height stool to handle meal preparation.

Further, the agency noted that Petitioner does not own the house. Petitioner rents from his brother and sister-in-law, who own the home. Rentals are specifically excluded from home renovations, as noted above. Further, the agency noted that the kitchen renovations would benefit Petitioner's brother and sister-in-law. The agency argued that while Petitioner resides there at present, the agency does not know how long Petitioner will reside there and it is for that reason that policy prohibits home modifications for IRIS participants if he or she does not own the home where the renovations are to occur. The IRIS program requires IRIS participants to use an alternative funding source to cover the following services: goods, supports, and services not directly related to IRIS participant goals or needs, or that primarily benefit someone else. DHS Policy Manual: 5.4B Non Allowable Services. Based on the above, Petitioner has not met his burden.

CONCLUSIONS OF LAW

Petitioner has failed to meet his burden to prove that his OTE request for a kitchen renovation meets eligibility requirements for funding under the IRIS program.

THEREFORE, it is

ORDERED

Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

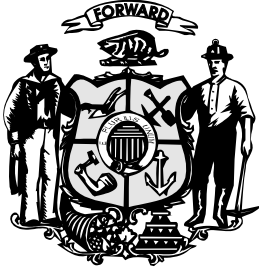
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of January, 2022

\s _____
Nicole Bjork
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 13, 2022.

Bureau of Long-Term Support